

THE HONORABLE BENJAMIN H. SETTLE

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

**KYLIE STEELE,**

Plaintiffs,

v.

**NATIONAL RAILROAD PASSENGER  
CORPORATION, a/k/a AMTRAK, a  
District of Columbia corporation; and,  
DOES ONE THROUGH FIFTY,**

Defendants.

Case No. 3:19-cv-05553-BHS

**PLAINTIFF’S TRIAL BRIEF**

**INTRODUCTION**

Plaintiff Kylie Steele respectfully submits the following Trial Brief to address the factual, legal, and evidentiary issues presented in this matter. This claim arises out of an incident on December 18, 2017, at approximately 7:30 a.m., when Amtrak Cascades Train 501 derailed near DuPont, Washington. Plaintiff brought a common-law negligence action against National Railroad Passenger Corporation, d/b/a Amtrak (“Amtrak”) as a result of this incident. Amtrak has admitted liability in this matter, and the Court has granted Plaintiff’s summary judgment

1 motion on the issue of causation. The sole issue for the jury in this matter is the nature and extent  
2 of Ms. Steele's injuries; the amount of damages to which she is entitled as a result of this incident.

### 3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 On December 18, 2017, Kylie Steele was a 24-year-old woman traveling as a passenger  
5 on Amtrak Cascades Train 501 from Seattle to Oregon City, Oregon. She was traveling to meet  
6 up with her parents to spend the Christmas holidays with her family.

7 At approximately 7:30 a.m. on that day, Ms. Steele was riding in the sixth passenger car,  
8 numbered AMTK 7422, on the Amtrak Train 501 as it traveled south towards Oregon. At that  
9 time, the train was traveling on the Point Defiance Bypass section of the Lakewood Subdivision,  
10 on a descending grade, approaching the curve at milepost 19.8 that crosses over Interstate 5 from  
11 east to west. The curve located at milepost 19.8 had a permanent speed restriction of 30 miles  
12 per hour, but Train 501 was traveling at 78 miles per hour as it approached the curve, and never  
13 slowed. Due to this excessive speed, the lead locomotive and the passenger cars, including  
14 AMTK 7422 on which Plaintiff was riding, was caused to jump the track and derail. As a result,  
15 Ms. Steele sustained serious and permanent injuries and damages, including a mild traumatic  
16 brain injury which significantly interferes with her function and abilities, and other physical  
17 injuries that have required treatment and that have caused her pain and suffering and limitations.

18 Prior to the derailment, Ms. Steele was a very active young woman with no pre-existing  
19 medical or psychological conditions connected to her complained of injuries and damages. She  
20 was an active participant in soccer, basketball, softball, snowboarding, and tennis in high school,  
21 and continued to play soccer and basketball recreationally in college, as well as snowboarding.  
22 As a young adult, she was a runner, training for and successfully completing a marathon in 2016.

1 At the time of the derailment, Ms. Steele was enrolled at Antioch University in Seattle,  
2 Washington, pursuing a Master of Arts in Education degree.

3 Ms. Steele was asleep at the time of the derailment and was jarred awake as the train  
4 started to leave the tracks. The car crashed to a rest perpendicular to the track, and Ms. Steele  
5 suffered a mild traumatic brain injury in the derailment. As a result of the mild traumatic brain  
6 injury, she experiences severe fatigue and loss of stamina, and debilitatingly is unable to focus  
7 and concentrate for sustained periods of time. She suffers from severe headaches, including when  
8 she exerts herself, vision difficulty, and difficulty with her balance. She also still suffers from  
9 neck pain resulting from the derailment.

#### 10 LEGAL AND EVIDENTIARY ISSUES

11 Amtrak has admitted liability for the incident. Plaintiff will introduce relevant  
12 background facts and exhibits that are relevant to damages to show the force of impact, the  
13 damage to the passenger car, and other matters relevant to Plaintiff's damage claims. This limited  
14 evidence related to liability is admissible, as it is relevant to the question of damages. *Snyder v.*  
15 *Gen. Elec. Co.*, 47 Wash. 2d 60, 67-68, 287 P.2d 108, 112-13 (1955); *Smelko v. Brinton*, 241  
16 Kan. 763, 768, 740 P.2d 591, 595 (1987) ("Although plaintiffs were relieved of establishing  
17 liability, we think the better rule is to permit a plaintiff to introduce reasonable evidence to show  
18 how the injury was sustained."); *Jones v. Carvell*, 641 P.2d 105, 112 (Utah 1982) (evidence going  
19 *only* to liability is excluded in admitted liability claim) (emphasis added). In *Snyder*, an admitted  
20 liability case for an injury to a passenger in a bus accident, the court allowed evidence of, among  
21 other things, where the plaintiff was seated, the speed of the bus and the force of the impact, so  
22 that the jury could properly assess the plaintiff's damages. Plaintiff intends to introduce similar  
23 such evidence as it is highly relevant to the nature and extent of Plaintiff's injuries and damages.

1 On September 16, 2021, the Court granted Plaintiff's summary judgment on the issue of  
2 causation, holding that: "Steele has established as a matter of law that the derailment caused her  
3 mild traumatic brain injury. There is no contrary evidence. Steele's motion for summary  
4 judgment on causation is **GRANTED**, to the limited extent that the derailment caused her mild  
5 traumatic brain injury." *See* Dkt. No. 36, at p. 7 (emphasis in original). The jury should thus be  
6 instructed that Amtrak caused Ms. Steele's mild traumatic brain injury through its negligence in  
7 the derailment, and that should not be disputed at trial. Plaintiff did sustain a variety of other  
8 physical and emotional injuries as a result of the derailment and such evidence will also be  
9 presented at trial. Therefore, the issues for determination in this trial are the nature and extent of  
10 Ms. Steele's other injuries and the amount of damages to which she is entitled for the impacts of  
11 her traumatic brain injury and any other injuries she establishes she suffered as a result of this  
12 incident.

13 Other evidentiary issues which may arise at trial involved the introduction of medical  
14 records and the failure to identify and disclose witnesses. Regarding medical records, the parties  
15 are attempting to come to an agreement regarding the use of records during trial. However,  
16 Plaintiff submits medical records should not be admitted as exhibits to the jury. As set forth in  
17 Plaintiff's motions *in limine*,<sup>1</sup> witnesses may be questioned about the contents of the records, but  
18 introducing the records themselves, which of necessity will be heavily redacted and in a difficult-  
19 to-read electronic format, invites speculation and conjecture by the jury, serves to confuse the  
20 jury, and does not carry sufficient probative value to warrant admission. Any potential relevance  
21 of the medical records is substantially outweighed by the danger of unfair prejudice, confusing  
22 the jury and the needless presentation of cumulative evidence.

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23 <sup>1</sup> See Dkt. No. 33, motion no. 2.



1 calculated value of the life-care plan expenses range from \$1,977,652 to \$2,996,727. Again, the  
 2 projected expenses are discounted to present value.

3 Ms. Steele does not intend to make any claims for past medical expenses or past out-of-  
 4 pocket expenses related to care and treatment.

### 5 NON-ECONOMIC DAMAGES

6 Plaintiff will also present evidence through her medical care providers and through a  
 7 variety of friends and family who have known Ms. Steele for many years regarding the extensive  
 8 non-economic damages she has sustained in this incident. Prior to this incident, Ms. Steele was  
 9 a vibrant, very active young woman whose life has been permanently changed as a result of the  
 10 derailment and her brain injury. Plaintiff will be diligent to avoid unnecessarily cumulative  
 11 testimony in this regard. However, Plaintiff submits she should be granted leeway to fully explore  
 12 and prove the full nature and extent of her damages. The witnesses Plaintiff intends to call know  
 13 Ms. Steele from different perspectives and aspects of her life, and therefore offer unique  
 14 perspectives and insight into the changes and limitations they have observed in Ms. Steele as a  
 15 result of her brain injury. Plaintiff has the burden of proof on damages and therefore should be  
 16 allowed to briefly call a variety of witnesses to provide a thorough and comprehensive picture of  
 17 her extensive general damages and the impacts she has suffered across various aspects of her life  
 18 from Amtrak's admitted negligence.

19 Dated: September 21, 2021

**ROSSI VUCINOVICH PC**

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23 **ATTORNEYS FOR PLAINTIFF**